Filed

9

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 271.

OLIVER BRONSON, APPELLANT,

vs.

STEPHEN KINTON.

FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED APRIL 8, 1868.

SUPREME COURT OF THE UNITED STATES.

No. 271.

OLIVER BRONSON, APPELLANT,

vs.

STEPHEN KIMPTON.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Return	3	2
Citation	4	2
Service	6	3
Record in Court of Appeals	8	3
Docket entries	8	3
Proceedings in Supreme Court, Orleans county	8	4
Summons	8	4
Bill	9	4
Answer	11	6
Findings of the court	13	8
Judgment of court in special term	16	10
Case and exceptions	17	10
Appeal	25	17
Judgment of court in general term	26	18
Appeal	26	18
Clerk's certificate	27	19
Judgment of Court of Appeals	28	19
Bond	31	20

1 BRONSON
vs.
KIMPTON.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the Court of Appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between Stephen Kimpton, plaintiff, and Oliver Bronson, defendant therein, and which record and proceedings remain before you, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause in the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Oliver Bron-
2 son, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-seven.

KENNETH G. WHITE, *Clerk.*

John J. Townsend, att'y, 15 Nassau street, New York city.

I certify that a copy of the within writ was this day lodged for the adverse party in the office of the clerk of the Court of Appeals of the State of New York, where the record remains.

Albany, Jan. 25, 1868.

C. H. YOUNG,
Deputy Clerk Court of Appeals.

faction of record of a mortgage upon plaintiff's farm, in Barre, Orleans county, on the ground that it had been paid.

The defense rested upon the ground that the mortgage being by its terms payable in gold and silver coin, lawful money of the United States, could not be satisfied by a payment in legal tender notes.

Mortgage dated May 14, 1859. Mortgage due July 1, 1864.

Cause tried before Grover, justice, May 18, 1865. Judgment dismissing complaint entered September 4, 1865. Judgment reversed at Erie county, general term, May, 1866.

JOHN J. TOWNSEND,
Att'y for Appellant.

Supreme Court, county of Orleans.

STEPHEN KIMPTON
ag't
OLIVER BRONSON.

[5-cent U. S. rev. stamp.]

To Oliver Bronson, defendant:

9 You are hereby summoned to answer the complaint of Stephen Kimpton, plaintiff, a copy of which is herewith served upon you, and to serve a copy of your answer on the subscribers at the village of Albion, Orleans county, N. Y., within twenty days after the service of this summons, exclusive of the day of service, or the plaintiff will apply to the court for the relief demanded in the complaint.

GOFF & WHITE,
Plaintiff's Attorneys.

Supreme Court, county of Orleans.

STEPHEN KIMPTON
ag't.
OLIVER BRONSON.

The plaintiff complains of the defendant, says that on the 15th day of May, 1859, he was and still is seized in fee simple and possessed of a certain piece or parcel of land, situate in the town of Barre, in the county of Orleans, described as follows:

All that certain tract of land situate in the town of Barre, in the county of Orleans and State of New York, distinguished as part of lot number thirty-five, in township number fourteen in the first range of townships of the Holland Land Company's purchase, bounded east by a line parallel with the west bounds of said lot at the distance of twenty-five chains and one link west therefrom, and bounding on land deeded by the Holland Land Company to Amos Cope, thirty-two chains and sixty-three links; north by lot number thirty-six, sixteen chains and sixty-seven links; west by land deeded by said

company to Warren Joy, thirty-seven chains and seventy-five links; and southerly by land deeded to said Warren Joy, seventeen chains and forty-eight links, containing fifty-eight and a half acres, be the same more or less.

Also, all that certain other tract of land situate in the town of Barre aforesaid, and distinguished as part of lot number thirty-five, in township number fourteen in the first range, bounded east by the tract of land hereinbefore described, thirty-eight chains and sixty-two links; south by the center of the highway, ten chains and forty links; west by a line running north one degree and forty-five minutes east, one chain and seventy-three links; and north by lot number thirty-six, nine chains and forty links, containing thirty-nine acres, be the same more or less.

Also, all that certain other tract of land situate in the town of Barre, aforesaid, distinguished as the southwest part of lot number thirty-six, in towhship number fourteen in the first range, bounded south by lot number thirty-five, thirty chains; west by township number fourteen in second range, fifteen chains and sixty-seven links; north by land now or formerly owned by John D. Buckland, thirty chains; and east by a line parallel with the west bounds of said lot number thirty-six, fifteen chains and fifty-six links, containing 46½ acres, be the same more or less.

That on the fourteenth day of May aforesaid the said plaintiff, to secure the payment of the sum of one thousand eight hundred dollars, executed and delivered unto the defendant in this action a mortgage on said premises conditioned for the payment of the said sum of one thousand eight hundred dollars "on the first day of July, which will be in the year of our Lord one thousand eight hundred and sixty-four, with interest for the same, to be computed from the date hereof at the rate of seven per cent. per annum, which said interest shall be paid semi-annually, viz: on the first day of January and July in each and every year;" and the said mortgage further provided that "the payments both of principal and interest are to be made at such place in the city of New York as the said Oliver Bronson, his executors, administrators, or assigns shall, in writing, from time to time appoint, and in default of such appointment, then and in that case to the credit of the said Oliver Bronson, his executors, administrators, or assigns, in the City Bank of said city."

That said mortgage was afterwards, and on the 17th day of May, 1859, duly recorded as a mortgage in the office of the clerk of Orleans county, in book of mortgages number thirty-four, on page fifty-eight, and thereby became a lien for the amount thereof upon the said premises.

That the said Oliver Bronson has not in writing or otherwise appointed any place in the said city of New York at which the payments of principal and interest or either were to be paid; that on the 13th day of August, 1864, the plaintiff caused payment to be made of the said sum of one thousand eight hundred dollars, and all the interest unpaid thereon, which was sixteen dollars, and two dollars for the costs and expenses of a discharge of said mortgage, to the

credit of the said Oliver Bronson in the City Bank of the city of New York, pursuant to the provisions of said mortgage. That plaintiff thereupon caused to be presented to the said defendant a
11 written discharge of said mortgage, so that the same might be discharged of record, and offered to pay the expense of executing and acknowledging said discharge, if any, over and above the two dollars paid as aforesaid, but that said defendant wholly refused to execute or acknowledge said or any other discharge of said mortgage, and that the said mortgage remains an apparent lien upon said premises, and is a cloud upon the plaintiff's title to said lands and premises.

Wherefore the plaintiff demands that the said defendant be ordered to satisfy and discharge the said mortgage of record, so that the same shall not be an apparent lien upon said premises, or for such other, or further, or different relief as to the court may seem agreeable to equity.

GOFF & WHITE,
Plff's Att'ys.

Supreme Court.

Answer.

STEPHEN KEMPTON *ag't* OLIVER BRONSON.

And the defendant, Oliver Bronson, by John J. Townsend, his attorney, answering the complaint herein, respectfully shows to this court, that on or about the fourteenth day of May, A. D. 1859, the defendant did at the plaintiff's request lend and advance to the plaintiff the sum of eighteen hundred dollars referred to in the complaint, upon the agreement expressly made at the time and stated in writing that the same should be repaid in gold or silver coin, and that with the definite intent to secure payment of the debt in coin exclusive of any other medium of payment, the plaintiff did execute and deliver to the defendant on or about the day aforesaid a bond bearing date the day aforesaid in the penal sum of thirty-six hundred dollars in gold or silver coin, lawful money of the United States of America, to be paid unto the defendant, his executors, administrators, or assigns, for which payment well and truly to be made the plaintiff did thereby bind himself, his heirs, executors, and administrators; and there was a condition, under the said bond written in substance, that if the said plaintiff, his heirs, executors, or administrators should pay unto this defendant, his executors, administrators, or assigns, in gold or silver money as aforesaid, the sum of eighteen hundred dollars on the first day of July, in the year 1864, with interest for the same, to be computed from the date of said bond
12 at the rate of seven per cent. per annum, to be paid semi-annually, viz: on the first day of January and July in each and every year, in coin as aforesaid, until the said principal shall be paid; such payment both of principal and interest to be made at such

place in the city of New York as this defendant, his executors, administrators, or assigns should, in writing from time to time, appoint, and in default of such appointment, then in that case to the credit of this defendant, his executors, administrators, or assigns in the City Bank of the city of New York, then the said bond to be void, else to remain in full force and virtue; and that the said plaintiff, with the like definite intent to secure the payment of the said sum of money mentioned in the condition of said bond in gold or silver coin, exclusive of any other medium of payment, did at the same time execute under his hand and seal, duly acknowledge and deliver to the defendant a mortgage bearing even date with the said bond. whereby he mortgaged to this defendant in fee certain lands and real estate in the complaint in this action particularly described and that the defendant avers that the said mortgage is the same referred to in the complaint, and that it was duly recorded as stated in the complaint; and defendant for greater certainty refers to the said bond and mortgage now in his possession, or to the record of said mortgage.

And the defendant denies that the plaintiff on the 13th day of August, 1864, or at any other time, caused payment to be made of the said sum of eighteen hundred dollars, or of the interest thereon, or of any part of the principal or interest to the credit of the defendant in the City Bank of the city of New York, pursuant to the provisions of said mortgage. And the defendant says, that the plaintiff has failed to comply with the condition of the said bond and mortgage, by neglecting to pay in gold or silver money as aforesaid the sum of eighteen hundred dollars or the interest thereon from the first day of July, 1864, and the same in gold or silver coin, with interest from the day last aforesaid, is due and unpaid to this defendant. The defendant denies that he ever refused to execute or acknowledge a satisfaction piece of said mortgage upon the satisfaction thereof, and he has no knowledge or information sufficient to form a belief whether he was ever requested to sign a satisfaction piece thereof, further than that he was on one occasion requested by a stranger to sign a paper of the purport of which defendant is ignorant, and which was stated to be a proposed satisfaction piece of said mortgage.

13 And this defendant insists that the plaintiff is not entitled to a judgement for the satisfaction or discharge of said mortgage of record or for the costs of this action, and defendant is willing, has offered, and still offers to extend the time of payment of said mortgage for the period of ten years, and the plaintiff has hitherto refused to accept such offer.

And this defendant prays affirmative relief in this; that unless the plaintiff elect to extend such mortgage an account may be taken by and under the direction of this honorable court of what is due and owing to this defendant for principal and interest on his mortgage according to the condition of said bond, and that the plaintiff may be adjudged specifically to perform the condition of the bond and to pay to the defendant, in gold or silver coin as aforesaid, what may be found due to him on taking said account, together with his costs of this action, by a day to be appointed by this court, or in default

thereof that the plaintiff and all persons claiming under him may be debarred and foreclosed of and from all right and equity of redemption in or to the mortgaged premises and every part thereof, and that the defendant may have such further and other relief as may be meet, and that the defendant may have judgment for the costs of this action.

JOHN J. TOWNSEND,
Att'y for Def't.

Supreme Court.

STEPHEN KIMPTON *ag't* OLIVER BRONSON.

ORLEANS COUNTY:

This cause having been brought to trial at a special term of the Supreme Court of the State of New York, held at the court-house in Albion, in and for the county of Orleans, on the 18th day of May, in the year of our Lord one thousand eight hundred and sixty-five, before me, Martin Grover, one of the justices of said Supreme Court, and counsel having been heard in behalf of the respective parties, I, the said justice, do hereby certify and decide that the following facts were proved and established before me on such trial, viz:

That on the 14th day of May, 1859, the defendant, Oliver Bronson, loaned to the plaintiff, Stephen Kimpton, the sum of eighteen hundred dollars; to secure the payment of which sum, with interest, the said Kimpton executed his bond to said Bronson under his
14 hand and seal, by which bond he, the said Kimpton, acknowledged himself to be held and firmly bound unto the said Oliver Bronson in the penal sum of three thousand six hundred dollars in gold or silver coin, lawful money of the United States of America, to be paid unto the said Oliver Bronson, his executors, administrators, or assigns; to which bond there was a condition annexed, which is in the words and figures following, to wit:

The condition of this obligation is such that if the above-bounden Stephen Kimpton, his heirs, executors, or administrators shall, and do well and faithfully pay, or cause to be paid unto the above-named Oliver Bronson, his executors, administrators, or assigns, in gold or silver money as aforesaid, the sum of one thousand eight hundred dollars on the first day of July, which will be in the year of our Lord one thousand eight hundred and sixty-four, with interest for the same to be computed from the date hereof, at the rate of seven per cent. per annum, which said interest shall be paid semi-annually, viz, on the first day of January and July in each and every year, in coin as aforesaid, (according to ten certain prommissory notes given for said interest bearing even date herewith,) until the said principal shall be paid as aforesaid; and the said payment, both of principal and interest, are to be made at such place in the city of New York as the said Oliver Bronson, his executors, administrators or assigns, shall in writing from time to time appoint; and in default of such appointment, then and in that case, to the credit of the said Oliver

Bronson, his executors, administrators, or assigns, in the City Bank of the said city, then in such case this bond to be void, otherwise to remain in full force and virtue.

That as further security for the repayment of the said sum of eighteen hundred dollars and the interest thereon as mentioned in the condition of said bond, the said Kimpton, together with his wife, at the time of the execution of said bond, executed and delivered to the said Bronson a mortgage signed by the said Kimpton and wife, and sealed with their seals, as the parties of the first part thereto, by which mortgage the said Kimpton and wife, after reciting the substance of said bond and condition, conveyed to said Bronson, party of the second part, the lands in the complaint of this action described, subject to the condition which was set forth in said mortgage, in the words and figures following, to wit, provided always, and these presents are upon this express condition, nevertheless, and if the said parties of the first part, their heirs, executors, or administrators shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then and from thenceforth these presents and the estate hereby granted shall cease and determine and be utterly null and void, anything hereinbefore contained to the contrary notwithstanding.

That the execution of said mortgage was duly acknowledged by said Kimpton and wife before a justice of the peace of Orleans county, as appeared by a certificate of such justice of the peace indorsed thereon; and the said mortgage was afterwards and on the 19th day of May, 1859, duly recorded as a mortgage in the office of the clerk of Orleans county.

That at the time of the execution of said mortgage, the said Kimpton was the owner in fee of the mortgaged premises, and it did not appear that he had ever parted with his title to said premises otherwise than by the execution and delivery of said mortgage.

That the said Bronson had not at any time appointed any place in the city of New York where payment of the principal or interest of the sum secured by said bond and mortgage should be made.

That on the thirteenth day of August, A. D. 1864, the plaintiff, at the City Bank in the city of New York, (the place appointed in the said bond and mortgage for the payment thereof,) delivered to the cashier of said bank the sum of one thousand eight hundred and eighteen dollars in United States treasury notes, issued in pursuance of the first section of chapter 34, of the acts of the second session of the 37th Congress of the United States, approved Feb. 25, 1862, and called legal tender notes, and on such delivery the plaintiff stated to said cashier that said notes were delivered to him in payment of the amount due on the bond and mortgage above described, with two dollars for the expenses attending the execution of a discharge thereof.

The cashier received the said notes and stated to the plaintiff that

he would place the same to the credit of the defendant, Oliver Bronson, in the said bank.

The sum of one thousand eight hundred and sixteen dollars was at the time last mentioned the full amount of principal and interest due on said bond and mortgage.

16 That thereupon afterward the defendant being requested by the plaintiff to execute a discharge of said mortgage, refused so to do, on the ground that the bond and mortgage could not be paid in anything except gold or silver coin without his consent, and that he had not consented to accept payment, or authorized payment to be made, otherwise than in such coin.

That at the time when the said treasury notes were delivered by the plaintiff to the said cashier, their market value at the city of New York, where they were delivered, as compared with gold or silver coin, such as is described in said bond and mortgage, was as one to two and fifty-six hundreths; that is, that one dollar in such gold or silver coin was worth two dollars and fifty-six cents of the said treasury notes.

That the said Bronson did not accept the said treasury notes or assent to the payment of said bond and mortgage or any part of the same therein.

And I, the said justice, do find and decide, as conclusions of law, that the said bond and mortgage could not be satisfied by a tender of said treasury notes; that the same have not, therefore, been paid or satisfied; that the conditions thereof have not been performed, and that the defendant is entitled to a judgment; that the complaint be dismissed with costs.

Dated Aug. 22, 1865.

MARTIN GROVER,
Justice of the Supreme Court.

Supreme Court, Orleans county.

Judgment, Sept. 4th, 1865.

STPHEN KIMPTON *ag't* OLIVER BRONSON.

This action having been at issue, and triable by the court, and the trial having been had at a special term of this court, at the court-house in the village of Albion, in the county of Orleans, on the 18th day of May, A. D. 1855, before Hon. Martin Grover, justice, presiding, whose decision in writing has been filed with the clerk, whereby judgment is ordered that the complaint be dismissed with costs:

Now, on motion of John J. Townsend, attorney for defendant, it is ordered and adjudged that the complaint in this cause be,

17 and the same is hereby dismissed, and that the defendant, Oliver Bronson, recover of the plaintiff, Stephen Kimpton, the sum of fifty-eight and 5-100 dollars, his cost and disbursements in this action, and that he have execution therefor.

G. A. PORTER, *Dep. Clerk.*

Supreme Court.

Case and exceptions.

STEPHEN KIMPTON
ag't
OLIVER BRONSON.

This action came on for trial before Hon. Martin Grover, justice, &c., at a special term of this court, at the court-house in the county of Orleans, on the 15th day of May, 1865, when the following proceedings were had:

It was admitted by the respective parties, that on the 14th day of May, 1859, the plaintiff was the owner, in fee simple, of the lands and premises described in the complaint in this action, and that he is still such owner.

That on that day he executed and delivered to the defendant, to secure the payment of a loan of the sum of $1,800, his bond and a mortgage upon the said premises, which said mortgage was conditioned for the payment of said sum and interest as follows :

Whereas the said Stephen Kimpton is justly indebted to the said party of the second part (the def't) in the sum of one thousand and eight hundred dollars in gold or silver coin, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of three thousand six hundred dollars in gold or silver coin as aforesaid, conditioned for the payment to the above-named Oliver Bronson, his executors, administrators or assigns, in gold or silver coin as aforesaid, of the sum of one thousand and eight hundred dollars, on the first day of July, which will be in the year of our Lord one thousand eight hundred and sixty-four, with interest for the sum to be computed from the date hereof at the rate of seven per cent. per annum, which said interest shall be paid semi-annually, on the first day of January and July in each and every year, in coin as aforesaid, (according to ten certain promissory notes given for said interest,) until the said principal shall be paid as aforesaid, and the payments, both of principal and interest, are to be made at such place in the city of New York as the said Oliver
18 Bronson, his executors, administrators, or assigns, shall in writing from time to time appoint, and in default of such appointment, then and in that case to the credit of the said Oliver Bronson, his executors, administrators, or assigns, in the City Bank of the said city.

That the said mortgage was afterwards and on the 17th day of May, 1859, duly recorded as a mortgage in the office of the clerk of the county of Orleans, in book of mortgages number 34, on page 58, and thereby became a lien for the amount thereof upon said premises.

That the said defendant has not in writing or otherwise appointed any place in the said city of New York at which the payments of principal and interest or either were to be made.

That on the 13th of August, 1864, the plaintiff, at the City Bank of the city of New York, delivered to the receiving teller of said bank the sum of one thousand eight hundred and eighteen dollars, in

United States Treasury notes, which are declared by the laws of the United States to be a legal tender in payment of all debts.

That on the said 13th of August, 1864, the market value of United States Treasury notes, such as are mentioned above, as compared with gold or silver coin of the United States, was as one to two hundred fifty-five—one hundred dollars in coin being [being] equal in value to two and hundred and fifty-five dollars in treasury notes.

That at that time the whole amount due and unpaid on said bond and mortgage was the sum of $1,816.

That at the time of such payment or delivery as aforesaid, the said plaintiff declared to the receiving teller of said bank that the said sum of $1,816 was paid upon the said bond and mortgage as the full amount due thereon, and the other two dollars for the expenses of a discharge of said mortgage, and that after such statement the said teller received the said sum and placed the same to the credit of said Bronson.

That on the 15th day of August, 1864, the plaintiff presented to said defendant a discharge of said mortgage and requested that he execute the same, which the said defendant wholly refused to do.

The following letter, delivered to defendant, was read in evidence:

NEW YORK, *Aug.* 15, 1864.

Dr. Oliver Bronson:

DEAR SIR: On the 13th inst. I paid into the City Bank of this city $1,818 to your credit, in legal tender notes of the United States,
19 on behalf of Stephen Kimpton, to pay the mortgage described on the next page of this letter. I also enclose a blank discharge of said mortgage, and request that you execute the same and return to me, by mail, at Albion, N. Y., as soon as may be.

Truly yours, &c.,

JNO. H. WHITE,
Att'y for Kimpton.

The statement referred to in said letter, a copy of which was tendered to the teller, is as follows:

Mortgage from Stephen Kimpton and Eliza, his wife, to Oliver Bronson, Dated May 14, 1859.

Recorded May 17, 1859, in liber 24 of mortgages, on page 58, Orleans county clerk's office.

Principal due July 1, '64	$1,800 00
Interest from July 1, 1864, to date	16 00
For expenses of discharge	2 00
	$1,818 00

Dated August 13, 1864.

JNO. H. WHITE,
Att'y, Albion, N. Y.

The following letter, received from defendant, was also read in evidence:

NEW YORK CITY, *Aug.* 19, '64.

Mr. John H. White, Albion, N. Y.:

DEAR SIR: On my return to this city I reply to your favor of 15th. My brother, who is now in Europe, attends to my business. He will soon be here, as he has taken his passage for October. You will please, therefore, to let the matter rest until his return.

Respectfully yours,

O. BRONSON.

This action was commenced on the 14th day of December, 1864.

The following is the copy of the mortgage above mentioned:

This indenture made the 14th day of May, in the year of our Lord one thousand eight hundred and fifty-nine, between Stephen Kimpton and Eliza, his wife, of the town of Barre, in the county of Orleans, and State of New York, parties of the first part, and Oliver Bronson, late of the city of Hudson, in the county of Columbia, and State aforesaid, party of the second part. Whereas the said Stephen Kimpton is justly indebted to the said parties of the second part in the sum of one thousand and eight hundred dollars, in gold or silver coin, lawful money of the United States of America, secured to be paid by his certain bond or obligation bearing even date with these presents, in the penal sum of three thousand and six hundred dollars, in gold or silver coin, as aforesaid, conditioned for the payment unto the above-named Oliver Bronson, his executors, administrators or assigns, in gold or silver coin, as aforesaid, of the sum of one thousand and eight hundred dollars, on the first day of July, which will be in the year of our Lord one thousand eight hundred and sixty-four, with interest for the same, to be computed from the date thereof, at the rate of seven per cent. per annum, which said interest shall be paid semi-annually, viz: On the first day of January, and July, in each and every year, in coin, as aforesaid, (according to ten certain promissory notes given for said interest, bearing even date herewith,) until the said principal shall be paid as aforesaid, and the payments both of principal and interest are to be made at such place in the city of New York as the the said Oliver Bronson, his executors, administrators or assigns, shall in writing from time to time appoint, and in default of such appointment, then and in that case, to the credit of the said Oliver Bronson, his executors, administrators or assigns, in the City Bank of the said city, with a proviso thereunto written, whereby it is expressly agreed and fully understood, that if default be made in the payment of any of the said promissory notes, which have been given for the interest on the principal sum above mentioned, as aforesaid, and any portion thereof should remain due and unpaid for the space of thirty days after the same shall become due and payable according to the above condition, then, and in that case the principal sum above-mentioned, together with all arrearages of interest thereon, should at the option of the said Oliver Bronson, his executors, administrators or assigns, thereupon become due and

payable, and may be demanded immediately thereafter, anything thereinbefore expressed to the contrary notwithstanding, as by the said bond or obligation and the condition thereof, reference being thereunto had, may more fully appear. Now this indenture witnesseth, that the said parties of the first part, for the better
21 securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar to them in hand paid by the said party of the second part at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever:

All that certain tract of land situate in the town of Barre, in the county of Orleans, and State of New York, distinguished as part of lot number thirty-five, in township number fourteen, in the first range of townships of the Holland Land Company's purchase, bounded east by a line parallel with the west bounds of said lot, at the distances of twenty-five chains and one link west therefrom, and bounding on land deeded by the said Holland Land Company to Amos Cope, thirty-two chains and sixty-three links, north by lot number thirty-six, sixteen chains and sixty-seven links, west by land deeded by said company to Warren Joy, thirty-seven chains and seventy-five links, and southerly by land deeded to the said Warren Joy, seventeen chains and forty-eight links, containing fifty-eight and a half acres, be the same more or less.

Also all that certain other tract of land situate in the town of Barre aforesaid, and distinguished as part of lot number thirty-five, in township number fourteen, in the first range, bounded east by the tract of land hereinbefore described, thirty-eight chains and sixty-two links, south by the centre of the highway ten chains and forty links, west by a line running north one degree and forty-five minutes east, one chain and seventy-three links, and north by lot number thirty-six, nine chains and forty links, containing thirty-nine acres, be the same more or less.

Also all that certain other tract of land situate in the town of Barre aforesaid, ditsinguished as the southwest part of lot number thirty-six, in township number fourteen, in the first range, bounded south by lot number thirty-five, thirty chains, west by township number fourteen, in the second range, fifteen chains and sixty-seven links, north by land now or formerly owned by John D. Buckland, thirty chains, and east by a line parallel with the west bounds of said lot number thirty-six, fifteen chains and fifty-six links, con-
22 taining 46½ acres, be the same more or less. The three parcels of land above described, containing together 144 acres, more or less.

Together with all and singular the tenements, heredaditaments and appurtenances thereunto belonging or in any way appertaining, and

the revision and revisions, remainder and remainders, rents, issues, and profits thereof, and also, all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity, of the said parties of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances; to have and to hold the above-granted, bargained and described premises, with the appurtenances, unto the said party of the second part, his heirs and assignees, and to his and their own proper use, benefit and behoof forever.

Provided always, and these presents are upon this express condition nevertheless, that if the said parties of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then, and from thenceforth, these presents, and the estate hereby granted shall cease, determine and be utterly null and void, anything hereinbefore contained to the contrary in anywise notwithstanding.

And the said Stephen Kimpton, for himself, his heirs, executors and administrators, doth covenant, grant and agree, to and with the said party of the second part, his executors, administrators or assigns, that the said Stephen Kimpton shall and will well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the said condition; but if default shall be made in the payment of the said sum of money above mentioned, or the interest that may grow due thereon, or any part thereof, that then and from thenceforth it shall be lawful for the said party of the second part, his executors, administrators or assigns, to enter into and upon all singular the premises hereby granted or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said parties of the first part, their heirs or assigns therein, at public auction, according to the act in such case made and
23 provided, and as the attorney of the said parties of the first part, for that pupose, by these presents duly authorized, constituted and appointed to make and deliver to the purchaser or purchasers thereof a good sufficient deed or deeds of conveyances in the law for the same in fee simple, and out of the money arising from such sale to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the same premises, rendering the surplus of the purchase money, if any there shall be unto the said parties of the first part, their heirs or assigns; which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said parties of the first part, their heirs or assigns, and all other persons claiming or to claim the premises or any part thereof, by, from or under them, or any of them. And the said

Stephen Kimpton, one of the parties of the first part, for himself and his heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, and his heirs and assigns, that at the time of the ensealing and delivery of these presents he is well seized of the premises above conveyed, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law in fee simple, and hath good rightful power and lawful authority to grant, bargain and sell and convey the same in manner and form as aforesaid, and that the same are free and clear from all incumbrances of what kind and nature soever, and against all and every person or persons lawfully claiming or to claim the whole or any part thereof, will forever warrant and defend.

In witness whereof the said parties to these presents have hereunto interchangeably set their respective hands and seals the day and year first above written.

[L. S.] STEPHEN KIMPTON.
[L. S.] ELIZA KIMPTON.

Sealed and delivered in the presence of—
V. V. BULLOCK.

STATE OF NEW YORK, *County of Orleans:*

On this 14th day of May, in the year of our Lord one thousand eight hundred and fifty-nine, before me came Stephen Kimpton and Eliza, his wife, to me known to be the individuals described in, and who executed the foregoing indenture, and they acknowledged to me that they executed the same; and the said Eliza, on a private examination by me, separate and apart from her said husband,
24 acknowledged that she executed the same freely and without any fear or compulsion of her husband.

V. V. BULLOCK,
Justice of the Peace in and for said County.

Recorded May 17, 1859 at 10 a. m., book 34, page 58.

The testimony being closed, after hearing counsel for the respective parties, the court found the facts and conclusions as follows: (See finding attached to the judgment, folio 26, ante.) The court also found that the plaintiff was the owner of the equity of redemption of the premises described in the complaint at the time of the commencement of this action, and that at that time he was the owner in fee of said premises.

To so much of the decision of the court as finds that the defendant refused to execute the discharge of such mortgage, on the ground that the said bond and mortgage could not be paid in anything but gold or silver coin, without his consent, the plaintiff's counsel duly excepted.

Plaintiff also duly excepted to the finding, that the defendant had not consented to accept payment or authorized payment to be made otherwise than in such coin.

Also to the finding, that the said Bronson did not accept said treasury notes, or assent to the payment of said bond and mortgage or any part of the same therein.

Plaintiff duly excepted to the conclusion of law, that said bond and mortgage could not be satisfied by a tender of said treasury notes.

Also to the conclusion of law, that the same have not therefore been paid or satisfied.

Also to the conclusion of law, that the conditions thereof have not been performed.

Also to the conclusion of law that the defendant is entitled to judgment.

Also to the direction that the complaint be dismissed.

The plaintiff's counsel, then and there, requested the said court to find as follows:

1st. That the said legal tender notes were paid into the city bank of the city of New York, upon said bond and mortgage, and passed to the credit of the defendant.

The said court refused so to find, to which decision plaintiff duly excepted.

2d. And that they were received by the said defendant in full payment and satisfaction of said bond and mortgage.

25 The court refused so to find, to which decision plaintiff duly excepted.

3d. And that the bond and mortgage were and are fully paid and satisfied.

The court refused so to find, to which decision plaintiff duly excepted.

4th. And that the plaintiff was entitled to the relief demanded in the complaint.

The court refused so to find, to which decision plaintiff duly excepted.

That afterwards, and on the 4th day of September, 1865, judgment was entered upon the findings of said court.

In Supreme Court.

Notice of appeal from judgment.

STEPHEN KIMPTON *ag't* OLIVER BRONSON.

COUNTY OF ORLEANS:

Please to take notice that the above-named Stephen Kimpton, the plaintiff in the above-entitled action, appeals from a judgment entered therein on the fourth day of September, 1865, in favor of the defendant and against the plaintiff, and for fifty-eight dollars and five cents, to the general term of this court.

Yours, &c.,

GOFF & WHITE, *Att'ys for Pl'ff.*

To J. J. Townsend, esq., att'y for defendant, and E. F. Brown, esq., clerk of the county of Orleans.

At a general term of the Supreme Court of the State of New York, held at the court-house in the city of Buffalo, in the county of Erie, and 8th judicial district, on the 7th day of May, 1866.

Present: Hon. Martin Grover, presiding justice, Hon. Charles Daniels, Hon. Richard P. Marvin, Hon. Noah Davis, justices.

STEPHEN KIMPTON, app'l
ag'st
OLIVER BRONSON, resp't.

Jno. H. White, H. R. Selden.

Judgment of special term reversed with costs, and judg-
26 ment directed for plaintiff, adjudging the mortgage in suit paid, and requiring defendant to satisfy the same of record.

Opinions of Daniels J. & Grover J., Grover J. dissenting.

A true copy.

J. W. FISHER,
Dep't Clerk.

Supreme Court.

Judgment, May 24, 1866.

STEPHEN KIMPTON, app'l
ag't
OLIVER BRONSON, resp.

COUNTY OF ORLEANS:

This action having been brought to trial on an appeal from a judgment entered in this court, in said county, on the fourth day of September, 1866, in favor of the above-named respondent, against the above-named appellant, for dismissing the complaint in this action, and for $58.05 costs, and the decision of the court upon said appeal having been filed, whereby the aforesaid judgment is in all things reversed and judgment directed for plaintiff adjudging the mortgage in suit paid, and requiring defendant to satisfy the same of record:

Now, on motion of Goff & White, attorneys for appellant, it is adjudged that the said judgment be, and the same is hereby, in all things reversed, and that said appellant do recover against said respondent the sum of two hundred and seventy and 2-100 dollars for his costs and disbursements in the action. And it is further adjudged that the mortgage mentioned in said complaint is paid and satisfied, and that the said defendant execute, acknowledge and deliver to the plaintiff, or his attorney, a discharge of said mortgage, and satisfy the same of record.

G. A. PORTER, *Clerk.*

Supreme Court.

STEPHEN KIMPTON *ag't* OLIVER BRONSON.

Please to take notice that the defendant appeals to the Court of Appeals from the judgment entered on the decision of the general term in this action, and from every part thereof.

Yours, &c.,

JOHN J. TOWNSEND,
Att'y for App'l.

Dated June 28th, 1866.

27 To George A. Porter, esq., clerk of Orleans county. Goff & White, esqs., attorneys for respondent. G. A. Porter, clerk. Filed June 30th, 1866.

STATE OF NEW YORK. *Orleans County Clerk's Office, ss:*

I do hereby certify that I have compared the foregoing copy of judgment, roll, case, notice, and notice of appeal to the Court of Appeals, with the originals of the same now remaining on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county this 16th day of July, 1866.

[SEAL.] G. A. PORTER, *County Clerk.*

[Internal revenue stamp, cancelled.
July 18th, 1866. G. A. P.]

28 In the Court of Appeals.

STATE OF NEW YORK:

At a Court of Appeals for the State of New York, held at the capital, in the city of Albany, on the 18th day of January, A. D. 1868.

Present: Hon. Ward Hunt, chief judge, presiding.

STEPHEN KIMPTON, respondent, *v.* OLIVER BRONSON, appellant.

This cause having been argued by Mr. John J. Townsend, counsel for the appellant, and Mr. John H. White, for the respondent, and due deliberation having been thereupon had, it is ordered and adjudged that the judgment appealed from in this action to this court be, and the same is hereby, affirmed without costs: and it is hereby certified and stated by this court, that in the record and proceedings herein was drawn in question the construction of certain provisions
29 of the Constitution of the United States, viz: Article 1st, section 8th, clause 5th, and other clauses in that section; and

the statutes regulating the gold and silver coins of the United States, fixing their denominations, values, and descriptions, and making them a legal tender; and the 20th section of the 16th chapter of the statutes, passed at the 1st session of the 2d Congress, in 1792, providing, among other things, that the money of account of the United States shall be expressed in dollars or units, dimes or tenths, cents or hundredths, and mills or thousands, and that all proceedings in the courts of the United States shall be kept and had in conformity to this regulation; and the decision was against the title, right, and privilege specially claimed and set up under the same by the defendant and appellant, to a tender in satisfaction of his demand, at the time stated, of an amount of United States legal tender notes of the kind referred to in the record and proceedings, greater than actually tendered.

And the decision was against the exemption which the defendant and appellant claimed, and set up, under the said provisions, clauses, and articles, from any obligation to receive such notes at their denominational value, irrespective of their value in relation to gold and silver coin.

30 And in the record and proceedings was drawn in question the construction of the first section of the act entitled An act to authorize the issue of United States notes, and for the redemption and funding thereof, and for funding the floating debt of the United States, passed Feb'y 25, 1862; and the decision was against the exemption specially claimed and set up by the defendant and appellant under the same, from any obligation to accept, in satisfaction of his demand, the number of such notes actually tendered.

C. H. YOUNG,
Deputy Clerk.

31 In the Supreme Court of the United States of America.

OLIVER BRONSON, plaintiff in error,
against
STEPHEN KIMPTON, defendant in error.

Know all men by these presents that we, Frederick Bronson, of the city, county, and State of New York, and John J. Townsend and Edward M. Townsend, of said city, are held and firmly bound unto the above-named Stephen Kimpton, defendant, his executors, administrators, and assigns, in the sum of one thousand dollars, to be paid to the said Stephen Kimpton, his executors, administrators, or assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally firmly by these presents.

Sealed with our seals, and dated the 20th day of January, one thousand eight hundred and sixty-eight.

Whereas the above-named Oliver Bronson has prosecuted to the Supreme Court of the United States a certain writ of error to reverse the judgment rendered by the judges of the Court of Appeals

of the State of New York against the said plaintiff in error, in favor of the said defendant in error:

32 Now, therefore, the condition of this obligation is such, that if the above-named Oliver Bronson shall prosecute the said writ of error to effect, and answer all damages and costs which, upon an affirmance of said judgment, or upon a dismissal of the said writ of error, may be adjudged or decreed to the said Stephen Kimpton, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] FREDERIC BRONSON.
[SEAL.] JOHN J. TOWNSEND.
[SEAL.] EDW'D M. TOWNSEND.

Sealed and delivered in the presence of—
WALTER H. CALHOUN.

STATE OF NEW YORK, *City and County of New York, ss:*

Frederic Bronson, John J. Townsend, and Edward M. Townsend, being duly sworn, say each for himself, that he is a resident of the city and county of New York, and a freeholder in the State of New York, and that he is worth the sum of two thousand dollars over and above all his debts and liabilities and responsibilities, and besides his property by law exempt from execution.

FREDERIC BRONSON.
JOHN J. TOWNSEND.
EDW'D M. TOWNSEND.

Sworn to before me this 20th day of January, 1868.
WALTER H. CALHOUN,
Notary Public City and County of New York.

33 STATE OF NEW YORK,
City and County of New York, ss:

On the twentieth day of January, in the year one thousand eight hundred and sixty-eight, before me personally came Frederic Bronson, John J. Townsend, and Edward M. Townsend, all personally known to me to be the same persons described in, and who executed, the foregoing instrument, and severally acknowledged that they executed the same.

WALTER H. CALHOUN,
Notary Public City and County of New York.

To Stephen Kimpton, above named:

The bond, of which the within is a copy, was this day filed in the office of the clerk of the Court of Appeals.
Jan. 25, 1868.

JOHN J. TOWNSEND, *Att'y.*

Endorsed: Supreme Court of the United States. Oliver Bronson, pl'ff in error, *vs.* Stephen Kimpton. Copy bond. Jan'y 22, '68. Approved. S. Nelson.

Evening Post Steam Presses, 41 Nassau St., cor. Liberty, N.

In the Supreme Court

OF THE UNITED STATES.

No. 271 September Term, 1869.

Oliver Bronson,
Plaintiff in Error.

vs.

Stephen Kimpton.

In Error to the Court of Appeals of the State of New York.

On the 14th May, 1859, the defendant borrowed of the plaintiff in error, $1,800, and to secure the repayment, gave his bond and mortgage, payable in gold or silver coin, on 1st day of July, 1864, with interest, in coin as aforesaid.

The form of the bond and mortgage is identical with that presented to this Court, in the case of Bronson *vs.* Rodes, reported.

7 Wallace, 229.

On 13 August, 1864, defendant at the City Bank, in the City of New York, (the place appointed in the bond

and mortgage for the payment thereof) delivered to the cashier, $1818, United States' Treasury notes, issued in pursuance of the act, February 25, 1852.

Plaintiff in error, on being requested to discharge the mortgage, refused, on the ground that it could not be paid, except in gold or silver coin, without his consent, and he had not consented to accept payment or authorized payment to be made except in coin.

Fol. 16, p. 10.

At this time, one hundred dollars, in coin, were equal in value to $255 in Treasury notes.

Defendant filed a bill in equity, praying that the mortgage might be discharged.

Fol. 11.

At a Special Term of the Supreme Court, September 4, 1865, the complaint was dismissed.

Fol. 17, p. 10.

May 24, 1866. A General Term of the Supreme Court reversed the judgment with costs, and directed the mortgage to be cancelled.

Jan. 18, 1868. The Court of Appeals affirmed this judgment.

Fol. 29–30, page 19.

Plaintiff in error asks that this judgment be reversed.

Points of Plaintiff in Error.

I.—The insufficiency of the tender was determined by the decisions of this Court, in Bronson *v.* Rodes. 7 Wallace, 229.

11.—The record shows that the plaintiff in Error did not accept the said Treasury notes, or assent to the payment of the said bond and mortgage or any part of the same.

JOHN J. TOWNSEND,
Of Counsel for the
Plaintiff in Error.